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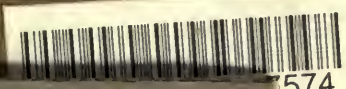


Court Practice  
by  
Frederick H. Gurtler



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# C O U R T P R A C T I C E

By  
FREDERICK H. GURTLE



DEMCO  
RY SUPPLIES

New Haven  
Conn



# COURT PRACTICE

*BY*

FREDERICK H. GURTLE

SHORTHAND REPORTER

CHICAGO

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1913

THIRD EDITION

ALPHABETIC TABLE

2010

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## PREFACE



**T**HIS little work contains some testimony and jury charge material, which, if practiced, will tend to increase your shorthand efficiency. The only originality I can claim is that which may result from the experience of a practical shorthand writer in putting down on paper the rapid utterances of court, counsel and witness in legible form. A book such as this was much desired by me when I was preparing for court work, and from a realization of its need by stenographers all over the country preparing for higher positions it is presented. I am confident that the faithful practice and study of these shorthand plates will minimize effort and increase efficiency in shorthand writing.

This book contains some of the very common court phrases in dictation form. Those who aspire to court reporting appointments will accomplish greater results by practicing these phrases in the form presented than by practicing mere lists of phrases. To those who do not aspire to court reporting appointments the logical extension of the phrasing principles of Gregg shorthand will be an interesting study.

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FREDERICK H. GÜRTLER

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TUTTLE

# Simple Testimony—I

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Simple Testimony—V

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Simple Testimony—VI

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### A Jury Charge—IV

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Testimony in a Bankruptcy Case—I

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Testimony in a Bankruptcy Case—VI

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Testimony in a Bankruptcy Case—VIII

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Matter Used in 1911 Buffalo Contest—VI

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Matter Used in 1909 Providence Contest—I

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Testimony in Cross Examination—II

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Testimony in Cross Examination—V

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Matter Used in 1913 Chicago Contest—I

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Matter Used in 1913 Chicago Contest—IV

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# Court Practice

## SIMPLE TESTIMONY

(Keys to plates on pages 4, 5, 6, 7, 8 and 9.)

### DIRECT EXAMINATION BY MR. REED.

- Q. What is your name? A. W. F. Hay.  
Q. Where do you live, Mr. Hay? A. 3673 Archer Avenue, Chicago.  
Q. What is your occupation? A. Motorman.  
Q. How long have you been a motorman?  
A. Going on four years now.  
Q. By whom are you employed?  
A. Chicago City Railway Company.  
Q. Mr. Hay, on the 22d day of August, 1912, what line were you running on at that time? A. Twenty-second Street.  
Q. And give us the route that you took from where you were on Twenty-second Street?  
A. From Forty-sixth Avenue to Wabash Avenue.  
Q. And on the morning of August 22d about 7:30, you had an accident, didn't you? A. Yes.  
Q. Your car collided, as I understand it, with a small wagon? A. Yes.  
Q. In which direction were you going? A. East.  
Q. What kind of a car did you have that morning?  
A. I had a pay-as-you-enter, one of the large cars.  
Q. Do you know about what one of those cars weighs?  
A. Well—  
Q. If you don't know exactly, give us your best judgment.  
A. About twenty-five ton, I guess.  
Q. Twenty-six tons, to be exact. A. Twenty-six.  
Q. You were going in an easterly direction? A. Yes, sir.  
Q. Now, Mr. Hay, I want you to describe to the jury just how it was that you happened to strike this wagon. Tell the jury when you first saw the wagon, what you did and all about it, in your own way, and speak slowly, loudly and distinctly.  
A. Well, I was going east on Twenty-second Street about sixty-five feet from west of Ashland Avenue, I noticed a team and wagon loaded with stone coming around the flatiron shaped building west of Ashland, and I was about twenty-five feet from the wagon when I noticed him. I commenced ringing the gong, using my brakes, and I seen that it wouldn't take. I seen I wasn't going to stop, so I reversed the car. That didn't do no good, he kept on coming, and I went into him.  
Q. What part of the wagon did you strike?  
A. Well, I struck almost the center of the wagon.  
Q. And where were you at the time the car struck the wagon?  
A. I was right in front of the wagon.  
Q. At your post? A. At my place.  
Q. What were you doing at that time?



## Simple Testimony

A. I was reversing my car.

Q. You were the nearest to the wagon on the car? A. Yes, sir.

Q. How far did your car go after you struck the wagon?

A. I should judge about five feet.

### CROSS EXAMINATION BY MR. GROSS.

Q. When did you leave Forty-sixth Avenue that morning?

A. That morning?

Q. Yes. A. Well, I couldn't tell you the exact time now.

Q. What is that? A. I couldn't tell you the exact time.

Q. Don't you know your starting time? A. I don't remember now.

Q. Do you know what time you got to Western Avenue?

A. No, I couldn't tell you.

Q. You know how long it took you to run from Western Avenue to Ashland Avenue that morning? A. No, I couldn't tell you that.

Q. Do you know whether or not you stopped at Paulina Street that morning?

Mr. Reed: That is objected to as immaterial to any issue in this case.

The Court: Objection overruled.

Mr. Gross: Do you know whether or not you made a stop at Paulina Street? A. No, sir.

Q. Do you know whether or not there were passengers standing at Paulina Street ready to get on your car that morning?

A. No, sir, I don't remember.

Q. Paulina is one block west of Ashland Avenue? A. Yes.

Q. Do you know whether or not you got the signal from your conductor to go right through Paulina Street?

A. No, sir, I couldn't say. I don't remember.

Q. You don't remember that? A. I don't remember.

Q. You remember where that laundry building is, do you, between Paulina and Ashland Avenue on Twenty-second Street? A. Yes, sir.

Q. On the south side of the street? A. Yes, sir.

Q. That is about half way down the block? A. Just about.

Q. Was there any obstruction between your car and Ashland Avenue when you got opposite to that laundry?

A. Not as I remember it.

Q. Isn't it a fact that when you are at Paulina Street that you can see all of the cars on Blue Island Avenue, Ashland Avenue and Twenty-second Street, those three intersections?

A. Straight ahead, yes, sir.

Q. You can even see the railroad shanty, that is a little to the south upon the east side of Ashland Avenue, can't you, when you are at Paulina Street?

A. No, I do not believe you can. I don't remember.

## Court Practice

- Q. You don't remember whether you can or not? A. No, sir.
- Q. How long did you make that run there prior to August 22d, 1912?
- A. I think I was there going on six months.
- Q. Before the accident?
- A. Well, at the end of that month, I think I made my sixth month, around five months.
- Q. How fast can your car travel when it is going full speed?
- A. Well, I never heard them say what it was exactly.
- Q. Have you ever tested it? A. No, sir.
- Q. How slow can it go? A. Well, it can merely move.
- Q. Now, in what distance can you make a stop running at the rate of ten miles an hour, do you know?
- A. About forty or fifty feet.
- Q. And what distance can you make the stop when you are running six miles an hour? A. About twenty-five feet.
- Q. The morning in question was a dry morning? A. No, sir.
- Q. What is that?
- A. Not as I remember of. I think I had a slippery rail that morning.
- Q. Do you know whether that was caused by rain?
- A. Well, it is most generally this kind of weather, you know, the rails are damp, the dew, I guess, or something.
- Q. This was in August, August 22d?
- A. Yes, August.
- Q. Outside of dew at half-past seven in the morning there wasn't anything the matter with the rail, was there?
- A. Yes, the sprinkler comes along there at eight o'clock.
- Q. Was there a sprinkler there that morning before you came along?
- A. No sir, not before I came along.
- Q. What is that? A. No, not before I came along.
- Q. How fast were you running when you got close to Ashland Avenue and you saw this wagon?
- A. Well, I should judge I was going about twelve miles an hour.
- Q. And were passengers standing there waiting for you to take them on? A. At Ashland?
- Q. At Ashland and Blue Island Avenue, where Blue Island Avenue strikes Ashland? A. Yes.
- Q. Did you wait to take on those passengers?
- A. I couldn't take them on.
- Q. Well, hadn't you reached that point yet? A. No, sir.
- Q. How far away from the passengers was it that you hit this wagon?
- A. Well, sir, I was about, I should judge, fifty or fifty-five feet.
- Q. West of where the passengers stood? A. West of Ashland.
- Q. West of Ashland? A. Yes, sir.
- Q. Well, now, Blue Island Avenue intersects there with Twenty-second Street, doesn't it? A. Yes, sir.

## A Jury Charge

### A JURY CHARGE

(Keys to plates on pages 10, 11, 12 and 13.)

Gentlemen of the Jury: The plaintiff in this action seeks to recover from the defendant company damages for personal injuries which are alleged to have been sustained on account of the negligence of said company.

The plaintiff claims that about eleven o'clock on the night of August 14, 1911, he was motoring a car of the defendant, and that because of defective brakes on the car, which would not take hold of the wheels, he was unable to stop or hold the car when descending a certain grade, and in consequence thereof this car collided with another car and he was injured.

The plaintiff's declaration consists of two counts, one of which avers that the said defendant negligently and carelessly suffered and permitted the said plaintiff to use and operate a certain car with an improper, unsuitable, and dangerous brake-shoe, all of which was well known to the said defendant but unknown to the said plaintiff, and by reason of the said negligence of the said defendant in permitting the use of said car with the defective brake-shoe as aforesaid, the said car on which the said plaintiff was a motorman as aforesaid ran into and collided with another car operated and controlled by the said defendant, whereby the said plaintiff was greatly bruised, cut, mangled, broken, injured, and distressed.

The second count is similar to the first, except that the word brakes is used in the second count instead of "brake-shoe" in the first count.

So that the negligence averred, and relied upon, by the plaintiff is, that the defendant suffered and permitted the plaintiff to use and operate the car with a defective, unsafe, and dangerous brake-shoe, or brakes.

The gist of this action is negligence, which is the want of ordinary care, and the burden of proving the negligence of the defendant rests upon the plaintiff. If there was no negligence on the part of the company, your verdict should be for the defendant, yet if the negligence of the plaintiff contributed proximately to the accident at the time thereof, the plaintiff cannot recover. In such case the plaintiff himself would be guilty of contributory negligence, and where there is such negligence the law will not attempt to measure the proportion of blame or negligence to be attributed to each party.

Contributory negligence has been defined to be the negligence of the plaintiff, or of the person on account of whose injury the action is brought, amounting to a want of ordinary care, and proximately contributing to the injury.

The relation existing between the defendant and the plaintiff at the time of the accident was that of master and servant and the

## Court Practice

primary duty upon the defendant toward the plaintiff in the course of his employment by reason of this relation was to furnish him reasonably safe tools, machinery and appliances with which to work. The tools or machinery used need not be of the safest, best, nor of the most improved kind. It is sufficient if they are reasonably safe, and adapted to the purpose of the employment. If the master fails to observe this rule of law, and injury results to his servant from such failure, he becomes liable therefor on the ground of negligence. In the performance of this duty the master must use all reasonable care and prudence for the safety of the servant, having regard to the character of the work to be performed. Such care must be in proportion to the danger of the employment. The servant has the right to rely on the master for the performance of this duty without inquiry on his part. The servant assumes no risk whatever as to such primary duty at the time he enters upon his employment; but he does assume all the ordinary risks incident to the employment; such as are patent, seen and known, or which may be seen and known by the ordinary use of his senses. And he is required to exercise due care and caution in the course of his employment to avoid dangers and injuries; for the master, having performed the primary duties required of him, is not an insurer of the safety of his servants.

It is the duty of the master also to maintain said tools and machinery in a reasonably safe condition so long as they are continued in use. If the master knows, or by the use of due diligence might know that the tools and machinery in use in his business are not reasonably safe, it is negligence on his part to fail to remedy and correct the defects of which he has knowledge, or by the exercise of due diligence he might discover. Notice to the foreman or person in general charge of the business, or having charge and control of the men and the cars, that the machinery is unsafe or dangerous, is, in law, notice to the master and after the receipt of such notice it would be negligence on the part of the master to fail to make such machinery reasonably safe for the servant in his employment. But in such case the master would not be liable if the servant having knowledge of such defect continued to use such machinery. The servant must always exercise such care and caution to avoid danger as the circumstances reasonably require, and the greater the danger the greater the care, diligence and caution required.

But even though machinery is defective in the knowledge of the employee, yet if the master has knowledge of such defect and promises to remedy the defect, and the employee, relying on that promise, continues by direction of the master, to use it for a reasonable time, he does so at the master's risk, inasmuch as he has a right to rely on such promise.

If you should believe from the evidence that the defendant exercised reasonable care in the inspection of the trolley car which the

## A Jury Charge

plaintiff was operating at the time of the accident, and that the brakes of said car, or other appliances complained of, when last inspected before the accident, were in reasonably good working condition and that any defect or disorder, if there was any, in any of said appliances was not discovered sufficiently long before the accident as to reasonably permit the repair thereof or the discontinuance of the operation of such car, in such event the existence of such defect or disorder would not constitute negligence on the part of the defendant.

If you should believe from the evidence that the defendant exercised reasonable care in the inspection of the car in question and of the brakes and other appliances thereon, and that the same were found in reasonably good working condition when the car was turned over to the plaintiff to operate as motorman, shortly before the accident, and that any defect or disorder, if there was any, in said appliances occurred during the operation of the car by the plaintiff, and that there was no opportunity to repair the same or discontinue the use of the car before the accident, in such event the existence of such defect or disorder would not constitute negligence on the part of the defendant. If you should believe from the evidence that the plaintiff knew on the day of the accident and before he began to operate car No. 6 that the brake of said car was defective and should also believe from the evidence that the defendant did not promise to remedy said defect upon any complaint thereof by the plaintiff and that the plaintiff took said car out and operated it with knowledge of such defective brake, then the plaintiff assumed the risk of operating said car with such defective brake and cannot recover for any injury to himself caused by such defective condition of such brake.

# Court Practice

## TESTIMONY IN A BANKRUPTCY CASE

(Keys to plates on pages 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23.)

- Q. What is your name? A. Mr. Mann.  
Q. What is your full name? A. Charles F. Mann.  
Q. Charles F. Mann? A. Yes.  
Q. You met Mr. Fenton for the first time in September, 1911?  
A. Yes, sir.  
Q. That was shortly after he had a fire, was it?  
A. That was before he had a fire.  
Q. Before he had a fire? A. Yes, sir.  
Q. Did you have any dealings with him in a business way?  
A. Yes, sir, I did.  
Q. Tell us the nature of those dealings. A. In what way?  
Q. Well, were you his partner or were you employed by him?  
A. Well, we entered into a partnership.  
Q. What date did you enter into the partnership?  
A. That was either the last of December or the first of January.  
Q. Did you have any written articles of partnership drawn up?  
A. No, sir.  
Q. Do you know Mrs. Elizabeth Donnell? A. Yes, sir.  
Q. What was the nature of that agreement? How were you to divide the profits of the business, if there were any?  
A. We were to divide those equally if there were any.  
Q. How about the losses? A. Sir?  
Q. How about the losses? A. We were to divide everything equally.  
Q. You were to share the losses equally, were you?  
A. The profits you mean?  
Q. I asked you if you were to share the losses of the business equally?  
A. Well—  
Q. Do you know what a business loss is? Have you ever run any business before this business with Fenton? A. No.  
Q. You know a business can run and lose money, don't you?  
A. Yes, sir.  
Q. Did you make any arrangements about sharing the business losses?  
A. We didn't make any arrangements.  
Q. That never entered your heads? A. No, sir.  
Q. Nothing was said about it? A. No, sir, nothing was said.  
Q. Did you put any money into the business? A. No, sir.  
Q. Not a cent? A. No, sir.  
Q. Who put all the money into this business?  
A. What money was put in was put in by Mrs. Donnell.  
Q. Who suggested this partnership agreement, you or Mr. Fenton?  
A. Mr. Fenton.  
Q. Do you know Mrs. Donnell? A. Yes, sir.

## Testimony in a Bankruptcy Case

- Q. Where do you live? A. 1018 Wallace Street.
- Q. Is that near Mrs. Donnell's place? A. Yes, sir, about two blocks.
- Q. Did you ever draw any money from this business? A. Salary.
- Q. A salary? A. Yes.
- Q. What was your salary? A. Thirty dollars a week.
- Q. How long did you draw that? A. Until February.
- Q. What week in February?
- A. Around the first of February. I don't remember the date.
- Q. Until when? A. About the middle of April.
- Q. Did Mr. Fenton ever draw any money from the business?
- A. The same.
- Q. Drew thirty dollars a week? A. Yes, sir.
- Q. When you went into the partnership with Mr. Fenton did you promise to furnish any money for the business?
- A. He asked me if I could get any money and I told him I didn't know, I would try and I didn't succeed in getting any.
- Q. You told him you would try? A. Yes.
- Q. Didn't you promise to furnish a certain amount of money to him?
- A. No, sir, I didn't. I told him that I would try to get it.
- Q. Did you mention any particular place where you would try?
- A. The only place I mentioned was Philadelphia.
- Q. Where did you expect to get it there? From whom?
- A. Well, I expected to get it from my people. I didn't know whether I could or not.
- Q. Did you tell him that you would get any particular sum? A. No.
- Q. No sum was ever mentioned? A. He mentioned a sum.
- Q. What did he say?
- A. I think it was about twelve thousand dollars.
- Q. Did he tell you that he was unable to pay his debts then?
- A. No, sir.
- Q. Did he give you any financial statement? A. Yes, sir.
- Q. Have you got that statement with you? A. No, sir.
- Q. Did that statement show him solvent or insolvent?
- A. It showed him solvent.
- Q. How much more than solvent? A. I can't remember that.
- Q. Was that statement given to you when you made this partnership arrangement with him?
- A. That was drawn up some time before, when he was talking to me about starting up.
- Q. Drawn on the day of the partnership, was it?
- A. I can't remember the date.
- Q. Do you remember about how much his liabilities were?
- A. It is pretty hard for me to remember that.
- Q. When was the first time you met Mrs. Donnell?
- A. The first time I met her? I can't say offhand.
- Q. Well, about when? A. The first time I met her was in November.

## Court Practice

Q. Now, did Mr. Fenton ever make up any other statements of his condition besides the one which was given you?

A. Not in my presence.

Q. Did this statement show any property besides the piece of real estate out on Madison Avenue? A. It showed a house.

Q. Where was that? A. At Fifty-first Street.

Q. Belonging to Fenton? A. Yes.

Q. Was this property encumbered? A. Yes, sir.

Q. It was the house where he lived at that time? A. Yes, sir.

Q. Does he still live there? A. As far as I know, yes, sir.

Q. Do you know if he still owns that house? A. I do not.

Q. Or still holds title to it? A. I do not.

Q. Was that 1438 East Fifty-first Street? Does that help fix the number? A. Yes, sir.

Q. Is that the number of the house? A. That is it.

Q. Is that near where you live? A. I live right near there.

Q. Now, do you remember what he valued the house at on Fifty-first Street? A. No, I do not.

Q. Do you know what he valued the Florida land at?

A. I think he valued the Florida land at twelve hundred dollars.

Q. How many acres? A. I think there were forty.

Q. Forty acres? A. Yes, I think so.

Q. You say you met Mrs. Donnell in November, 1911, for the first time. Did you have any talk with her at that time?

A. About what?

Q. About anything? A. I just met her in a casual way.

Q. Just a casual conversation? A. Yes, sir.

Q. Nothing in reference to business? A. No, sir.

Q. When was the first time you had any talk with her in reference to your business? A. Well, I can't remember that.

Q. Did you ever go to Mrs. Donnell to borrow from her to help run your business, to help run your business and Fenton's business?

A. Yes, sir.

Q. Do you remember the day, do you remember the date that you paid the first visit to her? A. I don't remember the date, no, sir.

Q. Do you remember approximately the time?

A. I don't remember just what time it was, no, sir.

Q. Was it 1912? A. It was in 1912.

Q. You are sure it wasn't in 1911? A. Well, I am not certain.

Q. Well, was it in the month of March, the first visit?

A. It was before then I think.

Q. Was it in the month of February? A. That I can't say.

Q. How much money did you borrow from her the first time you went to see her to borrow money?

A. I borrowed eight hundred dollars from her the first time.

Q. How did you get that money? A. She loaned it to me.



## Testimony in a Bankruptcy Case

Q. Who was with you at that time?

A. At the time I got the eight hundred dollars?

Q. Yes. A. Mrs. Donnell.

Q. Was Mr. Fenton there? A. No.

Q. Did Mr. Fenton know that you were going? A. Yes.

Q. Did he send you there?

A. Mr. Fenton said to me, "I don't care where you get it just so you get it."

Q. Did he say, "Go to my mother-in-law and get it"?

A. Not to my knowledge.

Q. Did you tell him that you were going to his mother-in-law to get it? A. Yes, sir.

Q. And that is what he said? A. Yes, sir.

Q. Did Mrs. Donnell ever lift any notes that Fenton had signed at the Woodlawn Trust and Savings Bank? A. Yes, sir.

Q. What was the amount of these notes? A. The sum total was \$1725.

Q. Now, with reference to the time that you borrowed this \$1800, when were these seventeen hundred dollar notes lifted?

A. At the time I borrowed that money.

Q. When was the next time you saw Fenton?

A. I saw him just shortly after I borrowed the money.

Q. Did you tell him you got it? A. Yes, sir.

Q. Did you tell him where you got it? A. Yes, sir.

Q. What did he say? A. I don't remember what he said.

Q. Did you borrow any more money from any one for your business needs? A. Yes, sir.

Q. When did you borrow the next lot? A. I don't remember the dates.

Q. How many weeks after the time you borrowed the first?

A. I couldn't say.

Q. A month after? A. I don't remember.

Q. Was it six months after? A. It wasn't six months.

Q. Was it five months? A. No, it wasn't five months.

Q. Was it four months? A. No.

Q. It was not four months? A. It was not.

Q. Was it three months? A. It was shortly after.

Q. As a matter of fact was it within two months after that?

A. It was within two months, yes, sir.

Q. What was the next amount of money you got from Mrs. Donnell?

A. I don't remember.

Q. Was it six thousand dollars? A. No.

Q. Was it a thousand dollars? A. I don't remember the amount.

Q. Was it between one and two thousand dollars?

A. I couldn't say. I don't remember the amount.

Q. Who was with you at the time you borrowed the next money?

A. Well, I couldn't say.

Q. Did Fenton know all about this? A. Yes, sir.

## Court Practice

- Q. Did you tell him each time? A. Yes, sir.
- Q. You yourself? A. Yes, sir.
- Q. Have you got any record which would show the different times that the money was borrowed by you?
- A. I don't think I have. I don't know.
- Q. Did the partnership keep any books? A. Yes, sir.
- Q. Do you know how many books you kept? A. No, I don't.
- Q. Were the amounts of money you borrowed recorded in the books of partnership? A. That I couldn't say.
- Q. What is your regular line of business? A. Paint business.
- Q. What are you doing now? A. Nothing.
- Q. Are you employed by Mrs. Donnell at present? A. No, sir.
- Q. Do you remember ever going down to Dobson's to get any money?
- A. Yes, sir.
- Q. How much did you borrow down there? A. I don't remember.
- Q. Oh, well, about how much money did you get?
- A. Four thousand dollars.
- Q. Do you remember when you borrowed that?
- A. I don't remember the month, no, sir.
- Q. Was it in 1911 or 1912? A. I think that was in 1912.
- Q. Was it three months ago or more than that length of time?
- A. I don't remember.
- Q. How much did you borrow down there?
- A. Four thousand dollars.
- Q. Did you borrow that before or after you borrowed the eight hundred dollars that you mentioned?
- A. I think that four thousand dollars was borrowed before.
- Q. So that as a matter of fact the eight hundred dollars which you mentioned wasn't the first money that you borrowed from Mrs. Donnell?
- A. We didn't borrow this money from her.
- Q. You borrowed the money from Dobson's, didn't you?
- A. No, Mrs. Donnell went security for it.
- Q. You went there to borrow that money? A. I did.
- Q. Was Mr. Fenton with you?
- A. He was down there a couple of times with me, yes, sir.
- Q. Did you get the money then or did you have to wait for it?
- A. We had to wait for it.
- Q. Did you get the money when you went down the first time?
- A. No, sir.
- Q. Was Fenton with you when you got the money?
- A. I don't remember that.
- Q. Was Mrs. Donnell with you when you got the money?
- A. No, sir.
- Q. How was the money paid to you, check or cash?
- A. No, it was put in the bank account.

## Matter Used in 1911 Buffalo Contest

Q. You say Mrs. Donnell wasn't with you when you got that four thousand dollars? A. Not when the money was placed in the bank.

Q. Was Fenton with you?

A. I don't remember whether he was or not.

Q. You remember being down there yourself, do you not?

A. I remember that, yes, sir.

Q. How is it you don't remember whether Fenton was with you?

A. Well, I don't just remember whether he was with me.

Q. Now, when you borrowed that money you gave some sort of security, didn't you? A. Yes, sir.

Q. What was the nature of the security?

A. Mrs. Donnell gave the security.

Q. Did Fenton give any security? A. Not to my knowledge.

Q. Did he give a second mortgage on his place?

A. Yes, he gave a second mortgage. He gave a second mortgage to cover this note to Mrs. Donnell.

Q. Why didn't he get the money on that second mortgage?

A. What do you mean?

Q. Why didn't Dobson give you the money on that second mortgage?

A. He wanted security for it.

Q. He wanted additional security? A. Yes, sir.

Q. Who went and asked Mrs. Donnell to sign a note as additional security for this four thousand dollars? A. I asked her.

Q. Was Fenton with you then? A. Not then, no.

Q. Did he ask you to go or did he tell you to go and ask Mrs. Donnell to sign that note? A. Mr. Fenton told me to go ahead and get that.

Q. Get what? A. That money.

Q. Did you tell Mr. Fenton?

A. I told Mr. Fenton the only place I could get it.

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## MATTER USED IN 1911 BUFFALO CONTEST

(Keys to plates on pages 24, 25, 26, 27 and 28.)

Q. You never talked with him about that at all? A. No, sir.

Q. You never told him about it? A. No, sir.

Q. You never told anybody connected with this case anything about it? A. No, sir.

Q. You never told anybody then before you came into court here to-day what you would swear to if you were asked all these questions that he has written out? A. Certainly not.

Q. Not a soul? A. No, sir; nothing but the truth.

Q. You never told anybody, either Mr. Duncan or the other lawyer who was in this case, or anybody connected with this case, or with their office, what you would say in response to these different questions?

## Court Practice

A. Certainly not.

Q. Before you came to court? A. No, sir.

Q. You never saw that little slip of paper that Mr. Duncan had in his hand? A. I cannot say I have; no, sir.

Q. You never went over with him or anybody else and marked on this map all the places where you would say that you were and where the boy was? A. Never marked it before I came into court to-day.

Q. And never went over it and said that you would say where all these things were? A. No, sir; I would not till I came into court; I have to testify to the truth.

Q. You absolutely refused to give him any information till you got here on the witness stand? A. Unless it was the truth; yes, sir.

Q. Did you mark on this map where you stood? A. I believe I did.

Q. You marked that letter on the map? A. I believe so; yes, sir.

Q. After you had marked that letter you erased it, moved it down 20 feet, and made another one, did you not? A. Yes, sir.

Q. You moved yourself down here about 20 feet? A. Yes, sir.

Q. You noticed so accurately, at the time this accident so suddenly happened, that you were able to state within a distance of 20 feet exactly where you were? A. I did not say exactly, I said near.

Q. You did say it when you erased the first letter you made and moved it down about twenty feet, did you not? A. I believe I was asked where I was.

Q. And you first marked the place, then erased it, moved it down a distance of about 20 feet, did you not? A. Yes, sir.

Q. You were going, you say, up the same way that the car was going?

A. The same way that the car was going—up on the left-hand side.

Q. The car was coming from behind you? A. From behind me; that is right.

Q. You were on the left-hand side of Fulton Street? A. Yes, sir.

Q. As the car was going and as you were going? A. That is right.

Q. So that the car was on your right-hand side? A. Yes, sir.

Q. And you were on the left-hand side of the car? A. That is right.

Q. These boys that you saw were in the vacant lot, crossing from the opposite side of Fulton Street from where you stood?

A. I said so.

Q. They were on the opposite side of the street, were they not?

A. I said that two boys were being chased by a woman out of a lot.

Q. One moment; these two boys were on the opposite side of the street from where you were? A. Yes, sir.

Q. How far back in the vacant lot? A. I should judge about twenty feet.

Q. And you noticed exactly what happened? A. A woman chasing them.

Q. You noticed exactly what part of the vacant lot they were in?

A. No, I could not say that.

## Matter Used in 1911 Buffalo Contest

Q. Well, did you notice what part of the vacant lot they were in; you said they were 20 feet back from the sidewalk? A. I said about 20 feet back in the lot; yes, sir.

Q. Then you did notice just where they were? A. Why, certainly.

Q. I suppose you refused to tell Mr. Duncan that before you went on the witness stand? A. I did not tell him anything.

Q. You did not tell him anything? A. No, sir.

Q. This boy, as he stood on the edge of the sidewalk, was about a foot from a pole that was erected there? A. Yes; not a pole, but an elevated post.

Q. An elevated pillar? A. Yes, sir.

Q. The car was down here at that time on the track, where you say you have marked the letter? A. Yes, sir.

Q. And the pole was about here, where you have marked? A. Yes, sir.

Q. And you were over here where you marked this letter? A. Yes, sir.

Q. That brought this elevated pole right square between the motorman of this car and this boy, as he stood there, did it not?

A. No, because the boy had started to run.

Q. Before the boy had started to run, the elevated railroad pillar was squarely between him and the motorman, was it not? A. No, sir.

Q. As you have marked it here? A. I said where the boy was at the time.

Q. Before he started to run, the elevated railroad pillar was between him and this approaching car, was it not? A. That is right.

Q. Which did you see first, the boy or the car? A. I saw the boy first.

Q. He was standing still there? A. Standing still; yes, sir.

Q. What was the next thing that attracted your attention? A. The next thing that attracted my attention was that the boy was under the car.

Q. That was the next thing that attracted your attention? A. The boy started to run across the street.

Q. You say that the next thing that attracted your attention was that the boy was under the car, and that is all you really saw of this accident, was it not? A. No.

Q. Why did you say, when I asked you what was the next thing you saw, that the boy was under the car, if that was not the first thing you saw? A. That was an error, if I said it.

Q. You say that before this boy started to run, you heard a shout?

A. I heard a shout from the boys to look out.

Q. What was there to look out for? A. I suppose to look out for the woman that was chasing them.

Q. What did she have in her hand? A. I could not tell you what it was; I suppose she had something.

Q. Was it a broom-stick, or a switch? A. I could not tell you.

Q. From the tone of voice of these boys you judged that they wanted to look out pretty sharp for her, did you not? A. Yes, sir; I don't know what the trouble was; they ran as though there was trouble behind

## Court Practice

them. This little boy was standing on the sidewalk behind the elevated pillar, evidently not taking part in it, but when there was trouble he ran too.

Q. Standing still? A. Yes, sir.

Q. When he heard the shout he ran too? A. Yes, sir.

Q. Fast? A. Very fast.

Q. When a small boy aged nine years sees a large colored woman with a switch, and hears a shout and knows that there is trouble behind him, for a short distance that small boy could run as fast as a trolley car, could he not? A. Yes, sir.

Q. You have marked on here a point with the letter where the boy and car came together? A. Yes, sir.

Q. On the track? A. Yes.

Q. And that shows that the small boy ran just about 20 feet diagonally toward this car, does it not? A. Towards the street.

Q. Towards the car, did he not? A. He did not run towards the car; he wanted to get away from the car.

Q. You have marked here with a letter where he stood before he started to run? A. Yes, sir.

Q. And you have marked with a letter where the car was?

A. Yes, sir.

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## MATTER USED IN THE 1909 PROVIDENCE CONTEST

(Keys to plates on pages 29 and 30.)

Q. How long had you been a conductor at the time of this occurrence? A. About four years and a half.

Q. How long had you been a conductor on that line?

A. Practically all the time.

Q. How many people were there in the interior of the car at the time of this occurrence?

A. Somewhere in the neighborhood of five or six.

Q. How many people were there on the platform?

A. Two at the time he boarded the car.

Q. Did you make a report of this occurrence to the company?

A. I did.

Q. Did you report the names of the people who were inside the car?

A. Some of them.

Q. How many names did you take of the people inside?

A. Well, I obtained the names of five or six different people who were on the car.

Q. I asked you about the inside of the car, first.

A. On the inside of the car?

## Testimony in Cross Examination

- Q. Yes. A. Well, we will say four.
- Q. Was that all there were in the car? A. I could not say definitely.
- Q. Well, what is your recollection?
- A. There may have been others and there may not.
- Q. Can you name the four now, whose names you took?
- A. Do you mean those inside the car?
- Q. Yes, inside. A. There was a Mr. Brown.
- Q. What is his first name? A. I do not recollect.
- Q. Where does he live? A. I don't remember.
- Q. Have you your report with you? A. No, sir.
- Q. Have you seen it to-day? A. No, sir.
- Q. Well, name the others.
- A. Mr. Thompson, Mrs. Miller, and a lady who was with her. I don't remember her name.
- Q. Have you seen those people since the accident?
- A. I don't exactly understand the question.
- Q. Have you seen those people, yourself, since the occurrence? Did you go and see them?
- A. I made no special effort to see them.
- Q. Well, did you see them? A. I saw Mr. Thompson.
- Q. Did you see any of the others? A. Not until the trial.
- Q. Who were the people on the outside, on the platform?
- A. Mr. Jones; that is all I know.
- Q. What is his first name? A. I don't know that.
- Q. Where does he live? A. I don't know that.
- Q. Have you seen him since the occurrence?
- A. Not until I met him at the trial.

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## TESTIMONY IN CROSS EXAMINATION

(Keys to plates on pages 31, 32, 33, 34, 35, 36 and 37.)

- Q. Have you had any previous experience with composition floors?
- A. Yes, sir.
- Q. Here in this city? A. Yes, sir.
- Q. On work for this same company? A. Yes, sir.
- Q. With the same kind of flooring?
- A. I think we had one small piece of that flooring.
- Q. Where was that, if you please?
- A. I think it was the Frick Building on Madison and Dearborn, if I am not mistaken.
- Q. For this defendant? A. I think we had that piece for him.
- Q. A portion of the floors laid by the plaintiff are still being used by your tenants, isn't that right? A. Yes, sir.
- Q. The only change made is that they are painted green, isn't that so? A. In a few places, yes, sir.

## Court Practice

- Q. Now, are they any smoother than they were when they were laid?  
A. No, sir.
- Q. Not a bit? A. No.
- Q. The only trouble is that the tenants who came in preferred a green to a gray? A. No, sir.
- Q. Isn't that right? A. No, sir.
- Q. The fact is that you are using the same flooring in large part to-day, isn't it? A. We are using them for this reason alone—
- Q. I am not asking you for the reason. You are using the flooring, aren't you? A. A small portion.
- Q. And you are using them with a green coat of paint? A. Yes, sir.
- Q. And they are just as smooth to-day as they were when you laid them, aren't they? A. Yes, sir.
- Q. And the reason that these changes were made is because the tenants other than Mr. Mills preferred the green? A. No, sir.
- Q. That isn't so? A. That isn't so.
- Q. Mr. Mills never moved into that building, did he?  
A. Well, he did and he didn't.
- Q. That only requires an answer of Yes or No.  
A. I can't answer it that way.
- Q. Did he ever take possession of the premises?  
A. He had the keys.
- Q. Did he ever take possession of the premises, physical possession?  
A. You mean do business in there?
- Q. Yes. A. No, sir.
- Q. You had a lease with him? A. Yes, sir.
- Q. And he never fulfilled the terms of his lease?  
A. Well, it was partly our fault.
- Q. And he never took physical possession? A. Yes, sir, he had the keys.
- Q. Did he ever take possession of the premises?  
A. He had material in there, yes, sir.
- Q. Did he ever do business there? A. No, sir.
- Q. Did he ever move in the fixtures? A. Yes.
- Q. All of them? A. I can't state.
- Q. Did he move his stock of goods in? A. Some goods were moved in.
- Q. Mr. Mills went into bankruptcy, didn't he? A. I don't know what the trouble was.
- Q. At any rate, he didn't continue in business so far as you know?  
A. That is right.
- Q. And you made a lease with other tenants? A. That is right.
- Q. Now, then, Mr. Mills intended to occupy this entire floor, didn't he? A. Yes, sir.
- Q. And when you found that he couldn't fulfill the terms of the contract, if that be the fact, you made other leases with other tenants, two or three of them? A. That is right.



## Testimony in Cross Examination

- Q. Shipman for one, an art dealer? A. Yes, sir.
- Q. And other tenants? A. Yes, sir.
- Q. And when they moved in they made certain requirements themselves as to the floors and fixtures, didn't they? A. No.
- Q. It isn't right? A. It isn't right.
- Q. Were the floors when they moved in in the same condition they were after the job was completed by the plaintiff? A. Yes.
- Q. And did they state that they preferred a green paint to a Tennessee gray marble? A. They were dissatisfied with the floor. They didn't state they wanted any particular color.
- Q. But it was with the color of the floor that they were dissatisfied? A. No, with the character of the floor.
- Q. For that reason you painted it green to satisfy them, is that right? A. No.
- Q. But you did paint it green, didn't you? A. We painted it green.
- Q. Did you make any other changes in the floor? A. We carpeted some of the floor.
- Q. Did you make any other changes in that floor other than to paint it green? A. No.
- Q. Did you make any changes in the floor at all or store occupied by the cloak dealer? A. We didn't. He did.
- Q. What changes did he make, if you know? A. He covered the floor with a carpet.
- Q. Did he make any changes in the floor? A. No.
- Q. Now, then, what changes, if any, were made in the rear part of that store? A. The rear part, did you say?
- Q. The rear part of that store. A. We tore up the floor and laid a new floor.
- Q. What kind of a floor was that? A. Tile.
- Q. Is that occupied at the present time. A. It is.
- Q. Tile is much more expensive than composition, is it not? A. I think it is about twice.
- Q. When was it that you made these leases with the other tenants? A. I don't remember the date. If I remember correctly it was about the first week in August.
- Q. Now, the first objection you made to the floor was with reference to the seams? A. Well, I wouldn't say that.
- Q. The point of joining the various strips of composition? A. That was one of the first objections, yes.
- Q. Now, what did the plaintiff do to cure that defect, if anything? A. So far as I know they did nothing. I asked them to get a polishing machine such as we have had on our other floors of the same material and they told me they had gone as far as they intended to.
- Q. Does that polishing machine take out the seams? A. It has.
- Q. It does? A. It does.

## Court Practice

Q. And it was for the purpose of removing the seams that you wanted the plaintiff to get this machine? A. Partly for that reason.

Q. Now, after the sawdust was removed you testified to a conversation you had with Mr. Adams? A. Yes, sir.

Q. You said to him in that conversation that you wouldn't touch the floor because he might charge you with putting something on it?

A. I told him I did not wish to touch the floor.

Q. You said you would not scrub it? A. I didn't wish to touch it.

Q. When was that, if you please?

A. I would say that was about the middle of April.

Q. When was Mr. Mills to move into his new store?

A. The first of February.

Q. Of what year? A. 1912, if I am not mistaken.

Q. And were you then advised of the fact that Mr. Mills was not going to move in? A. No, sir.

Q. When did you learn that for the first time?

A. I should say that was about the first of September last year.

Q. And it was then for the first time that you learned that he expected to violate the lease, although the lease called for possession by February 1, 1912? A. There were certain conditions in the lease whereby we were protected.

Q. When were they to take possession under the terms of the lease? A. They were to take possession the first of February.

Q. They didn't take possession at all physically?

A. Not physically, if you wish to put it that way.

Q. So that you knew in April of 1912 that that lease was going to be violated and that they were not going to take possession, did you?

A. No, sir, not until September.

Q. Despite the fact that they didn't move in? A. They didn't move in.

Q. And you knew they didn't expect to move in?

A. They were paying rent.

Q. They were paying rent? A. Yes, sir.

Q. And they continued to pay rent until September first?

A. No, they didn't.

Q. How long did they continue to pay rent? A. I don't remember.

Q. Did they pay rent for the month of May? A. I don't remember.

Q. Well, you have direct charge of those buildings, haven't you?

A. Yes, sir, but—

Q. If anybody knows about it you would? A. But, I can't remember how many months the rent was paid.

Q. You know they were paying rent and still you state you have no recollection of how many months the rent was paid?

A. I don't remember.

Q. Now, you state that there is no appreciable improvement in that floor since it has been scrubbed, no change of any kind?

A. I didn't say that.

## Matter Used in 1913 Chicago Contest

- Q. There has been no change for the better or the worse?  
A. Not that I know of.
- Q. Doesn't appear to be any cleaner? A. Not at all.
- Q. It didn't appear to be any more uniform in color after scrubbing?  
A. Absolutely not.
- Q. The surface wasn't any more polished? A. No, sir.
- Q. They told you it would require several months in the process of drying to produce perfect uniformity of color, didn't they?  
A. No, sir, they didn't.
- Q. Never stated that to you? A. Never did.
- Q. You never knew of that fact? A. Never knew of it.
- Q. You are sure of that? A. My previous experience had taught me different.
- Q. Isn't it a fact that by the letter of February 5, 1912, you learned that it would take many weeks for the color to become uniform owing to chemical action that takes place in the composition?  
A. While the sawdust was on there, yes, sir.
- Q. So that as a matter of fact they did advise you of that condition, did they not, before the contract was made?  
A. While the sawdust was on.
- Q. And you knew it? A. While the sawdust was on.
- Q. Had you been advised before that time that it would take several weeks for the process of drying to be completed?  
A. They told me nothing of the kind.
- Q. The fact is that before you made that contract, if it be a contract, you knew that it would take several weeks?  
A. Yes, sir.
- Q. For the process of drying to be completed, isn't that so?  
A. Yes, sir.
- Q. And you knew you can't produce uniformity within a week?  
A. No, sir, I didn't.
- Q. Didn't know that? A. I didn't know it.

\* \* \*

## MATTER USED IN 1913 CHICAGO CONTEST

(Keys to plates on pages 38, 39, 40, 41, 42 and 43.)

- Q. Mr. Long, your plant was out northwest of the city here, alongside of the tracks of the Ohio Electric, I believe? A. Yes, sir.
- Q. How long had you been operating out there prior to the date of the accident? A. About eight years.
- Q. And cars had been operated along there during that time, I suppose?  
A. Yes, sir.
- Q. All of that time? A. Yes.
- Q. You rode on them frequently, did you? A. Yes.
- Q. Did they operate past your place and past Stops 2 and 3 at high

## Court Practice

speed when they were not making stops? A. Not real high, but coming in they would come in at a pretty good speed. In going out they went at a pretty high speed.

Q. Ran about the same there as they did anywhere else? A. Yes.

Q. Between here and the second town west?

A. Yes, I suppose they did.

Q. This track, from Stop 3 until some little distance east of Stop 2, is a straight, level track, is it not? A. Yes, sir.

Q. And how far east of Stop 3 is Stop 2?

A. Well, of course I never measured that accurately, but I judge about 600 feet.

Q. You went to Toledo during the 25th of January? A. Yes, sir.

Q. It had not snowed that day nor the day before, had it?

A. Well, I think it was snowing that afternoon.

Q. You think it was? A. Yes.

Q. Well, will you say that it was?

A. I think it was. It came up cloudy and I think it was snowing that day some.

Q. What time? A. Along in the afternoon.

Q. In the afternoon before or after you left Toledo?

A. After I left there.

Q. After you left Toledo and before you arrived at Stop 2?

A. I suppose it did; they stopped several times. I did not look to see whether they picked up any or not.

Q. You were occupying a seat about the middle of the car?

A. Yes, sir.

Q. When you got on the car you observed the platform?

A. Not very much. There were quite a number of people got on there and I did not pay much attention to the platform.

Q. Just answer the question; did you observe the platform?

A. I think not.

Q. Did you look at the platform and see whether there was ice on it or not? A. I did not have time to look.

Q. Well, did you or did you not? A. I say I did not have time to.

Q. You did not. Was there ice on the platform at the time you got on? A. I do not know.

Q. Did you see any ice there?

A. I could not see; no. I did not see any ice.

Q. You could not see? A. I did not look at it.

Q. And you did not see any on it? A. I could not see, I say, at the time.

Q. I am not asking you what you COULD or COULD NOT see; DID you or DID you not? A. No, sir.

Q. Did you see any ice on that platform? A. No.

Q. You are positive of that? A. I told you I did not.

Q. You went up from the right hand or south side of the rear steps?

## Matter Used in 1913 Chicago Contest

- A. Yes, sir.
- Q. Onto the platform? A. Yes, sir.
- Q. And into the car? A. Yes, sir.
- Q. At Toledo? A. Yes, sir.
- Q. And you did not see any ice or snow on the platform?
- A. No, sir.
- Q. Nor on the steps? A. I said, "No, sir."
- Q. Was this car heated and warm? A. Warm inside; yes, sir.
- Q. Did you take a seat with anyone or were you alone?
- A. I was alone.
- Q. No one was seated with you from Toledo to Stop 2?
- A. I do not remember as there was.
- Q. Were you carrying any parcels with you? A. No, sir.
- Q. A valise or anything of that kind? A. No, sir.
- Q. Did you take any snow onto the steps as you went in?
- A. No, sir.
- Q. Did you see anybody else take any snow onto the steps?
- A. No, I did not see anybody.
- Q. You say that when you arrived at about Stop 2, or soon after leaving Stop 3, you could not attract the attention of the conductor who was standing near the rear door and you got up from your seat and went back to him and tapped him on the shoulder and stated to him you wanted to get off at Stop 2? A. Yes, sir.
- Q. Then you stepped out onto the platform after he had rung the bell? A. Yes, sir.
- Q. You did not observe any ice or snow on the platform?
- A. Not in front where I stepped down.
- Q. How? A. There was none where I stepped on the platform.
- Q. Was there any there anywhere? A. Yes, sir.
- Q. Where?
- A. There was ice along on the platform next to the steps, on the outer edge of the platform.
- Q. Over to the north side of the platform? A. Yes, sir.
- Q. How much ice or snow was there?
- A. I could not tell how much, but there was considerable there.
- Q. How wide was it?
- A. I could not tell the exact width, you know, I did not measure it.
- Q. How long was it?
- A. It was along the front of the steps along on the platform and on the end part of the platform next towards the car, where I saw this ice.
- Q. You saw that when you stepped out onto the platform?
- A. No, I did not see any there when I stepped on the platform.
- Q. When did you observe this ice? A. When I stepped on it.
- A. Not before? A. No, sir.
- Q. You are positive of that, are you? A. Yes, sir.

## Court Practice

Q. And then how far did it extend to the south from the top of the step? A. I could not tell how far it extended.

Q. Where did you stand when you went on the platform?

A. I stood right out in front of the door.

Q. In the middle of the platform? A. Yes, sir.

Q. And how far west of the door?

A. A little past the center towards the west side.

Q. Then you were in the middle of this platform, both east and west and north and south?

A. Pretty close to the middle, yes.

Q. And that is where you stood until the brakes caused the car to slacken and made you slip; is that the way you want the jury to understand it?

A. When the brakes were put on, why, my body swayed and I would have fallen over against the side, but I went to step out, you know, and stepped on this ice and my foot slipped.

Q. Did you have hold of anything while you were standing in the middle of the platform? A. No, sir.

Q. Did not? A. No, sir.

Q. Was the car running at a pretty good speed?

A. It was, yes, sir.

Q. While you were standing there?

A. When I first went out it was, I suppose.

Q. Now at what place did the motorman first apply the brakes; how far from the road crossing? A. I do not know.

Q. Do you know when he applied the brakes?

A. I know when I slipped is all.

Q. You do not know that he applied the brakes before that?

A. No, I do not.

Q. You knew he would have to apply the brakes to stop at Stop 2, did you not?

A. I suppose he had to, to stop, of course; yes, a man would have to apply the brakes.

Q. You have ridden on the cars before? A. Yes.

Q. You know they apply the brakes? A. Sure.

Q. And in applying the brakes you are aware that the car must be slowed down? A. Yes.

Q. You rode on those cars frequently? A. Yes, sir.

Q. And you knew that they were liable to be stopped suddenly by the brakes, did you not? A. Well, not necessarily, no.

Q. They are frequently stopped that way, aren't they?

A. No.

Q. Had you ever known a car to have brakes applied so that it would jolt the car inside? A. Yes, sir.

Q. You knew that before?

A. I knew that they done that sometimes, but not very often.

## Matter Used in 1913 Chicago Contest

Q. At the time you slipped you hadn't hold of anything about the car? A. Not that I know of.

Q. Is it not a fact that you had descended to the lower step of this car and had hold of the hand holds? A. No, sir.

Q. Before you slipped? A. No, sir.

Q. You are positive you did not? A. Yes, sir.

Q. If a car stopped and you were in the middle of the platform, wouldn't it throw you towards the front of the car?

A. It naturally would if I was right in the middle—I didn't say that I was right in the middle.

Q. You said you were as near the middle as you could tell?

A. Pretty close to the center of the car, of course.

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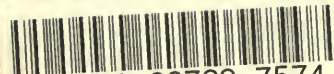
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